

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.179 OF 2006

Tanaji Balu Shinde

...Appellant

Vs.

Government of Maharashtra & Ors.

...Respondents

Mr.N.J.Patil for the Appellant

Mr.Madhav Jamdar for the Respondent Nos.3-A to 3-C.

CORAM: A.S.OKA, J.

DATED: MARCH 18,2006.

P.C.:

1. Submissions of the Advocate appearing for the parties were heard yesterday.

2. The Appellant is the original Plaintiff and the Respondents are the original Defendants. The Appellant filed a suit for declaration that notice dated 21st March 1983 issued by the Respondent No.2 directing the Appellant to hand over possession of the suit land to the Respondent No.3 (original Defendant No.3) was null and void and for perpetual injunction restraining the respondents from taking over possession of the suit land. The suit land is admittedly Inam land. The suit lands were Inferior village Watan Service Inam Class IV.

3. The predecessor of the Appellant ceased to be a Watandar and was not a Watandar on the date on which the Bombay

Inferior Village Watans Abolition Act, 1958 came into force. In fact a Kabulayat was executed in favour of the Respondent No.3 on 17th April 1947, granting lease of the suit land initially for a period of one year. After the abolition of the Watan under the said Act of 1958, it appears that the Respondent No.3 applied for regrant and in pursuance of the said application, Deputy Collector, Miraj by order dated 8th July 1969 held that the Respondent No.3 was entitled to regrant. The said order of the Deputy Collector was later on implemented. Even the predecessor of the present Appellant was a party to the proceeding before the Deputy Collector.

4. On 11th April 1978, the Appellant moved an application for regrant of the suit land in his favour. The said application was dismissed on 7th September 1978. The Appellant approached the Additional Commissioner for challenging the said order. The said order was confirmed by the Additional Commissioner. The Appellant took the matter to the Officer on Special Duty of the State Government by way of Revision Application. In the Revision Application, the Officer on Special Duty remanded the matter back to the Sub Divisional Officer. After remand, the Sub Divisional Officer directed that the suit land should be regranted in favour of the Appellant. The said order of the Sub Divisional Officer was challenged by the Respondent No.3 by preferring an Appeal to the Collector. The said Appeal was ultimately heard by the Officer on Special duty. The Appeal was dismissed. The

Respondent No.3 carried the matter to this Court by way of Writ Petition under Article 226 of Constitution of India. By Judgment and Order dated 23rd September 2005 in Writ Petition No.2281 of 1996 (reported in 2006 (1) Mh.L.J. page 333) this Court held that the order of regrant passed in favour of the Respondent No.3 had attained finality and the said order could not have been reopened at the instance of the Appellant. Therefore, the Division Bench of this court quashed and set aside the order passed by the Sub Divisional Officer dated 30th July 1983 in favour of the Appellant and directed that the possession of the land which was taken over from the Respondent No.3 on the basis of the said order dated 30th July 1983 should be restored to the Respondent No.3.

5. The suit filed by the Appellant was dismissed by the Trial Court. The Appeal was preferred by the Appellant which was dismissed by the District court. While dismissing the Appeal, the learned Additional District Judge directed the Appellant to restore the possession of the suit land in favour of the Respondent No.3. It must be noted here that though the Division Bench of this Court while deciding the Petition filed by the Respondent No.3 held that the Respondent No.3 is entitled to restoration of the possession, the order of restoration of possession was not passed expressly on the ground that in the Appeal filed by the Appellant before the District Court, an interim order was passed by which the possession of the Appellant was

protected. As of today, it is not disputed that in terms of the order passed by the lower Appellate Court the possession has been restored to the Respondent No.3

6. Shri Patil for the Appellant submitted that the Appellant was entitled to regrant and the order of regrant passed in favour of the Defendant No.3 was without jurisdiction. He submitted that in fact the Appellant had paid occupancy price before the deceased Respondent No.3 paid the occupancy price. He submitted that admittedly the grandfather of the Appellant was given the suit land by virtue of his service as a Peon and therefore, no person except successors of his grand father will be entitled to regrant. He submitted that the Respondent No.3 is not concerned with suit land. Shri Jamdar appearing of the legal representatives of the Respondent No.3 supported the impugned Judgments and decrees.

7. It is not in dispute that the decision of the Division Bench referred to above has attained finality in the sense that the Appellant has not challenged the said decision. The net result is that the order of regrant in favour of the deceased Respondent No.3 has been confirmed by this Court. If the order of regrant is confirmed by this Court and has attained finality, there is no question of the Appellant claiming regrant of the suit land.

8. In view of the said decision of the Division Bench, the

Appellate Court was justified in directing the restoration of the land in favour of the Respondent No.3-Defendant No.3. As all questions are concluded by a decision of the Division Bench of this court which has attained finality, no substantial question of law arises in this appeal. Second Appeal is dismissed with no order as to costs.

Judge.